

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**MICHAEL A. SPICER,**

**Defendant.**

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**Case No. 7-CR-244**

**JUDGE ALGENON L. MARBLEY**

**ORDER**

This matter is before the Court on Defendant Michael A. Spicer's *pro se* Motion for Leave to File Out-of-Time Notice of Appeal ("Motion for Leave"). (Doc. 73.) Spicer explains that he did not receive this Court's April 17, 2012, Opinion and Order denying his Motion to Suppress for the second time<sup>1</sup> on different grounds, until May 1, 2012. Upon receipt of the April 17, 2012, Opinion and Order, Spicer contacted his attorney, Marvin Barnett, but was unable to reach Barnett. Spicer eventually spoke with Barnett on May 7, 2012, and inquired about filing a notice of appeal. Barnett indicated a notice of appeal needed to be filed immediately, but did not offer to complete the filing. Spicer argues that Barnett's failure to file a notice of appeal or a motion for an extension to allow time to do so was "both unethical and unreasonable." (Doc. 73.) The Government does not object to Spicer's Motion for Leave, and states that Spicer "has demonstrated that his failure to file a motion was through no fault of his own." (Doc. 75.)

Federal Rule of Appellate Procedure 4(b)(1)(A) provides that: "[i]n a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

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<sup>1</sup> The Sixth Circuit vacated and remanded this Court's prior February 25, 2009, Opinion and Order denying Spicer's Motion to Suppress in an August 3, 2011, Opinion and Order. (Doc. 63, 64.)

(i) the entry of either the judgment or the order being appealed; or (ii) the filing of the government's notice of appeal." Moreover, section (b)(4) of Rule 4 states that: "[u]pon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b)." Fed. R. App. P. 4(b)(4).

Fourteen days from April 17, 2012, the date of this Court's Opinion and Order, would have been May 1, 2012. Thirty days from May 1, 2012 would have been May 31, 2012. Spicer's Motion for Leave was filed on May 14, 2012. Attached to the Motion for Leave was a proposed Notice of Appeal, and therefore, the Notice of Appeal was filed within the thirty-day time period allotted under Rule 4(b)(4). Fed. R. App. P. 4(b)(4).

Therefore, because Spicer has demonstrated good cause in that his failure to file Notice of Appeal was no fault of his own, and because he filed his Motion for Leave and proposed Notice of Appeal within the time period allotted under Rule 4(b)(4), this Court **GRANTS** Spicer's Motion for Leave. Spicer's Notice of Appeal should be appropriately docketed, and as it appears Barnett may no longer be representing Spicer, the Court will send Spicer a financial affidavit form. If Spicer wants new counsel appointed, he can complete the form and send it back to the Court.

**IT IS SO ORDERED.**

s/ Algenon L. Marbley  
**Algenon L. Marbley**  
**United States District Judge**

**Dated: June 13, 2012**